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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161767
Party	Plaintiff Nutramax Laboratories, Inc. Nutramax Laboratories, Inc. 2208 Lakeside Boulevard Edgewood, MD 21040 UNITED STATES
Correspondence Address	Michael D. Oliver, Esq. Bowie & Jensen, LLC 29 W. Susquehanna Ave. 6th Floor Towson, MD 21204 UNITED STATES oliver@bowie-jensen.com
Submission	Motion for Default Judgment
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Date	11/03/2004
Attachments	Amarin Mtn for Default Judgment.pdf (6 pages)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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In re Application of AMARIN)	
CORPORATION PLC)	
)	
Serial No.: 76/543455)	
Publication date: April 20, 2004)	Opposition No. 91,161,767
Trademark: "AMARIN")	
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)	
NUTRAMAX LABORATORIES, INC.)	
)	
Opposer)	
)	
v.)	
)	
AMARIN CORPORATION PLC)	
)	
Applicant)	
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MOTION FOR ENTRY OF DEFAULT JUDGMENT

Opposer, Nutramax Laboratories, Inc., ("Nutramax"), hereby files this Motion For Entry of Default Judgment, pursuant to F.R.C.P. 55, TBMP Rule 2.106(a) and 37 C.F.R. §2.106(a), against Applicant, Amarin Corporation PLC ("Amarin Corporation"), and states as follows:

1. Nutramax instituted this Opposition by filing a Notice of Opposition on August 18, 2004, alleging that Amarin Corporation's mark, "Amarin," was confusingly similar to Nutramax's pending federal trademark applications for Acerin™, Marin™ and Denamarin™.

2. Although Amarin Corporation's Answer to Nutramax's Notice of Opposition was due to be filed on or before September 27, 2004, as of the date of this Motion, no Answer has been filed in this Opposition.

3. Since filing the Notice of Opposition, Nutramax and counsel for Nutramax have received no communication whatsoever from Amarin Corporation or counsel for Amarin Corporation regarding this Opposition.

4. Amarin Corporation cannot establish good cause or a meritorious defense to avoid entry of judgment against it for failure to answer the Notice of Opposition.

WHEREFORE, Opposer, Nutramax Laboratories, Inc., respectfully requests this Board:

1. Issue a Notice of Default to Amarin Corporation for failure to answer; and
2. Upon Amarin Corporation's failure to respond to the Notice of Default:
 - (i) Specifically find that Applicant's mark, "Amarin" is likely to cause confusion or mistake as to the source of goods, quality and affiliation with the goods to be sold by Nutramax under Nutramax's pending trademark applications for Acerin™, Marin™ and Denamarin™; and
 - (ii) Grant judgment in favor of Nutramax and against Applicant on all allegations of the Notice of Opposition.
3. Grant such other and further relief as this Board finds just and proper.

Dated: November 3, 2004

Respectfully submitted,



Michael D. Oliver (#06919)
Elizabeth S. McClure (#25835)
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(410) 583-2400
Attorneys for Opposer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November, 2004, a copy of the foregoing Opposer's Motion For Entry of Default Judgment was served by first-class United States mail, postage pre-paid, to counsel for Applicant:

Daniel B. Schein, Ph.D, Esq.
P.O. Box 28403
San Jose, CA 95159

A handwritten signature in black ink, appearing to read 'EMC', with a long horizontal flourish extending to the right.

Elizabeth S. McClure

In re Application of
AMARIN CORPORATION
Serial No.: 76/543455
Publication date: April 20, 2004
Trademark: "AMARIN"

NUTRAMAX LABORATORIES, INC.

Opposer

v.

AMARIN CORPORATION

Applicant

NUTRAMAX LABORATORIES, INC.)
)
Opposer)
)
v.)
)
AMARIN CORPORATION)
)
Applicant)

Opposer, Nutramax Laboratories, Inc., ("Nutramax"), files this Memorandum of Law in Support of its Motion for Entry of Default Judgment, pursuant to F.R.C.P. 55, TBMP Rule 2.106(a) and 37 C.F.R. §2.106(a), against Applicant, Amarin Corporation PLC ("Amarin Corporation"), and states as follows:

Nutramax instituted this Opposition by filing a Notice of Opposition against Amarin Corporation on August 18, 2004, alleging that Amarin Corporation's mark, "Amarin" is likely to cause confusion or mistake as to the source of goods, quality and affiliation with the goods intended to be sold by Nutramax under Nutramax's pending federal applications for Acerin™, Marin™ and Denamarin™ (collectively, the "Marks"). Although Amarin Corporation's Answer to Nutramax's

Notice of Opposition was due to be filed on or before September 27, 2004, as of the date of this Motion, no Answer has been filed in this Opposition. Further, since filing the Notice of Opposition, Nutramax and counsel for Nutramax have received no communication whatsoever from Amarin Corporation, or counsel for Amarin Corporation, regarding this Opposition.

II. STANDARD FOR ENTRY OF DEFAULT JUDGMENT

Under Fed. R. Civ. P. 55, made applicable by Trademark Rule 2.127, the Board shall enter default against the Applicant for failure to Answer the Notice of Opposition. Such entry of default may be set aside by Applicant only upon Applicant's showing of good cause for failing to file its Answer to the Notice of Opposition and establishment of a meritorious defense. *See id.*; *see also*, *Paolo's Associates, Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r Pats. 1990).

III. AMARIN CORPORATION'S CONDUCT IN UTTERLY FAILING TO ANSWER THE NOTICE OF OPPOSITION OR OTHERWISE CORRESPOND WITH NUTRAMAX REGARDING THE OPPOSITION CONSTITUTES DEFAULT ENTITLING NUTRAMAX TO JUDGMENT IN ITS FAVOR.

As of the date of this Motion, Amarin Corporation's Answer to the Notice of Opposition is more than thirty-five (35) days overdue. Further, Amarin Corporation's failure to communicate with Nutramax in any way regarding the Opposition indicates, at worst, Amarin Corporation's willful refusal to respond or, at best, its gross neglect in tracking the status of its trademark application and this Opposition proceeding. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). Moreover, if the allegations of the Notice of Opposition are taken as true, Amarin Corporation cannot show a meritorious defense to the Notice of Opposition. *See id.* According to the trademark application, Amarin Corporation seeks to register "Amarin" in class 5, the same class as Nutramax's Marks. Further, the goods provided or intended to be provided by the parties under their respective marks are or would be sold in the same or nearly the same marketing channels and may be used to address the same health indications. Under the factors

identified in *In re E.I. du Pont de Nemours & Co.*, 177 U.S. P.Q. 563, 567 (C.C.P.A. 1973), the scales tip dramatically in favor of Nutramax, thereby dictating judgment in favor of Nutramax on the issue of likelihood of confusion between Nutramax's Marks and "Amarin."

IV. CONCLUSION

Therefore, for the reasons set forth above, Opposer, Nutramax Laboratories, Inc., requests the Board grant the relief more fully set forth in above and in Opposer's Motion for Entry of Default Judgment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MDO', with a long horizontal flourish extending to the right.

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